STATE OF MICHIGAN

COURT OF APPEALS

EDITH ELLEN PETTIS and PETTIS & ASSOCIATES, INC.,	UNPUBLISHED March 25, 2014
Plaintiffs-Appellees/Cross-Appellants,	
v	No. 313488 Kent Circuit Court
ADA TOWNSHIP,	LC No. 12-002073-CZ
Defendant-Appellant/Cross-Appellee.	

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

This action arises from prior litigation that was concluded by the agreement of plaintiffs, Edith Ellen Pettis and Pettis & Associates, Inc., and defendant, Ada Township, (Township) to the entry of a consent judgment that permitted plaintiffs to continue their mineral excavating and processing operation in Ada Township for 10 years, with the possibility of a 10-year extension. The instant appeal arises from plaintiffs' challenge of the Township's denial of their request for a 10-year extension. Plaintiffs maintain that the Township's denial was a breach of the consent judgment and a violation of plaintiffs' constitutional rights. The Township responded to plaintiffs' complaint by filing a motion for summary disposition. At the hearing on the Township's motion, the trial court inquired whether the 10-year limitations period of MCL 600.5809(3) barred plaintiffs' action, even though neither party raised or briefed the limitations period issue. In its subsequent order, the trial court held MCL 600.5809(3) barred any claims arising from the consent judgment, and accordingly, dismissed plaintiffs' complaint.[1] From this

[1] The trial court's opinion provided in pertinent part:

> The law is clear, the answer is plain. "[T]he period of limitations is 10 years for an action founded *upon a judgment or decree rendered in a court of record of this state*, or in a court of record of the United States or of another state of the United States, from the time of the rendition of the judgment or decree." MCL § 600.5809(3) (emphasis added). "Within the applicable period of

order, the Township now appeals. Because we conclude that the trial court's analysis was erroneous, we reverse and remand for further proceedings consistent with this opinion.

On appeal, the Township argues that MCL 600.5809 does not apply to the consent judgment because MCL 600.5809 only applies to noncontractual monetary obligations.[2]

We review a trial court's decision to grant summary disposition de novo. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Summary disposition under MCR 2.116(C)(7) is appropriate where the moving party is entitled to a judgment as a matter of law. *Duncan v Michigan*, 300 Mich App 176, 194; 832 NW2d 761 (2013). Summary disposition pursuant to MCR 2.116(C)(8) is proper if the nonmoving party failed to state a claim on which relief can be granted. *Kuznar v Raksha Corp*, 481 Mich 169, 176; 750 NW2d 121 (2008).

This case also involves statutory interpretation, which we review de novo. *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000). "The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature." *Karpinsky v Saint John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 542-543; 606 NW2d 45 (1999). "This Court should first look to the specific statutory language to determine the intent of the Legislature, which is presumed to intend the meaning that the statute plainly expresses." *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 223; 779 NW2d 304, 307 (2009).

> limitations prescribed by this subsection, an action may be brought upon the judgment or decree for a new judgment or decree. *The new judgment or decree is subject to this subsection.*" *Id.* (emphasis added).
>
> Plaintiff is correct that a consent judgment is a type of contract. However, for breaches of the consent judgment, "the proper remedy is enforcement." *Trendell v Solomon*, 178 Mich App 365, 369; 443 NW2d 509, 510 (1989).
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> * * *
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> Here, Plaintiffs filed the complaint on March 2, 2012, which is 3,889 days after the date of the consent judgment. This delay is roughly 10.65 years (10 years and 8 months). Consequently, summary disposition under MCR § 2.116(C)(7) must be granted because Plaintiffs have not timely filed to enforce or extend the judgment as provided in MCL § 600.5809(3).
>
> Plaintiffs' constitutional claims fail as well because the remedy sought is indistinguishable from the enforcement of the consent judgment. The proper remedy was to request an extension or enforcement from this Court within the applicable limitations period.

[2] We note that plaintiffs challenge the jurisdiction of this Court to consider the Township's appeal. We conclude that jurisdiction is proper because the Township is an aggrieved party under MCR 7.203(A) in light of the fact that the trial court's order granting summary disposition in the Township's favor bars it from seeking to enforce the consent judgment against plaintiffs.

"If the language in a statute is clear and unambiguous, this Court assumes that the Legislature intended its plain meaning, and the statute must be enforced as written." *Bay City v Bay Co Treasurer*, 292 Mich App 156, 166-167; 807 NW2d 892 (2011). This Court must "interpret the words in the statute in light of their ordinary meaning and their context within the statute and read them harmoniously to give effect to the statute as a whole." *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012). Moreover, we "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Id.* (citation omitted).

The consent judgment provided that excavation and processing could continue on the Pettis Property for a period of about 10-1/2 years; however, it also provided:

> Excavating and Processing Activities on the Pettis Property shall permanently cease on or before December 31, 2011, with [Edith] making a reasonable effort to complete the mineral removal activities within that time period, provided one renewal period, not to exceed ten years, may be requested by [Edith], with review and recommendation with respect to such a request by the [Township] Planning Commission with the final decision made by the Township Board upon a showing that:
>
> (i) A history of substantial compliance with the terms and conditions of this Order
>
> (ii) The applicant shall demonstrate that there are remaining valuable minerals and materials on the Pettis Property which [sic] can be extracted in commercial quantities
>
> (iii) There is a need for such materials.

Additionally, while excavation continued on the Pettis Property, the consent judgment required Edith to establish a 75-foot "setback" around the entire perimeter of the property, provide adequate "off-street" parking, maintain and preserve "[n]atural buffers and vegetation," prevent soil erosion and storm water "discharge," and "construct[] a visual buffer consisting of dense evergreen trees." The agreement also provided that, within 24 months of the cessation of mineral removal activity, Edith was required to "stabilize and replant[]" the property to "resemble a natural landscape within two growing seasons." The judgment did not provide for any monetary settlements or payments between the Township and Edith.

The statute at issue provides that "[a] person shall not bring or maintain an action to enforce a *noncontractual money obligation* unless, after the claim first accrued to the person or to someone through whom he or she claims, the person commences the action within the applicable period of time prescribed by this section." MCL 600.5809(1) (emphasis added). Thereafter, the statute provides that "the period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record of this state." MCL 600.5809(3).

We conclude that when read in context, the plain language of the statute clearly and unambiguously provides that MCL 600.5809 applies only to "noncontractual money obligations." The trial court's conclusion to the contrary was based on its reading of § 5809(3) in isolation. However, when § 5809(3) is properly read in context with § 5809(1), it is plain that

the 10-year limitations period for "an action founded upon a judgment or decree" set forth in § 5809(3) is the "applicable period of time prescribed by this section" for "an action to enforce a noncontractual money obligation" as set forth in § 5809(1). The trial court's interpretation impermissibly renders § 5809(1) nugatory because under that interpretation, the statute fails to set forth the applicable period of time for enforcement of a noncontractual money obligation. See *Johnson*, 492 Mich at 177 (reversing this Court's interpretation of a statute because the interpretation rendered the Legislature's organization nugatory).

Further, we note that our Court has previously interpreted MCL 600.5809 and concluded that the 10-year limitations period applies only to noncontractual money obligations. In *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 346; 573 NW2d 637 (1997), this Court declined to apply the ten-year limitations period to an order of liquidation that "provided the liquidator with the authority to pursue certain actions on behalf of the liquidating insurer." Specifically, this Court found that "[t]here has been no finding by a court of law that defendants owed plaintiffs any money. . . . Therefore, the statutory limitation period of [MCL 600.5809(3)] is inapplicable because there was no money judgment against defendants." *Id.*

Moreover, the consent judgment at issue is clearly not a money obligation. "A money judgment is one which adjudges the payment of a sum of money as distinguished from directing an act to be done." *Dept of Treasury v Cent Wayne Co Sanitation Auth*, 186 Mich App 58, 61; 463 NW2d 120 (1990). The consent judgment only requires certain acts or omissions; it does not require the payment of money. Therefore, MCL 600.5809 is inapplicable and summary disposition based on the 10-year statute of limitations set forth therein was improper. Because MCL 600.5809 does not apply to the facts of this case, we decline to address the parties' arguments concerning when a claim accrues under MCL 600.5809 or if plaintiffs' constitutional claims should have been dismissed based on the statute of limitations "because the remedy sought is indistinguishable from the enforcement of the consent judgment." Accordingly, we reverse the trial court's grant of summary disposition under MCR 2.116(C)(7) because it was based on an erroneous application of MCL 600.5809, and remand for reconsideration of the Township's motion for summary disposition.[3]

On cross-appeal, plaintiffs argue that, even if MCL 600.5809 bars enforcement of the consent judgment, it does not bar plaintiffs' constitutional claims. Because MCL 600.5809 does not apply to this action involving the consent judgment, see discussion *supra*, we conclude that it necessarily does not apply to plaintiffs' constitutional claims related to the same judgment. Thus, the trial court also erred by dismissing those claims on the basis of the statute of limitations set forth under MCL 600.5809.

[3] We note that plaintiffs argue that if MCL 600.5809 does not apply, the doctrine of laches would bar any action to enforce the consent decree. This issue was not raised before the trial court in this case and "[t]his Court has repeatedly declined to consider arguments not presented at a lower level" and has "only deviated from that rule in the face of exceptional circumstances." *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234 n 23; 507 NW2d 422 (1993).

We note that in response to plaintiffs' cross appeal, the Township asserts that the trial court actually dismissed plaintiffs' claims under MCR 2.116(C)(8) because plaintiffs' complaint was an improper collateral attack on the consent judgment and that we should affirm based upon this ground. We disagree with the Township's interpretation of the trial court's order. The trial court granted summary disposition under MCR 2.116(C)(7) because plaintiffs had "not timely filed to enforce or extend the judgment as provided" in MCL 600.5809(3). Moreover, the Township failed to raise any argument in its appeal that plaintiffs' claims was or should have been dismissed under MCR 2.116(C)(8).[4] We decline to address any issue related to alternative grounds for dismissing plaintiffs' claims within the context of the cross-appeal because it was raised in a responsive brief rather than as an issue in the Township's brief as an appellant. See *In re Herbach Estate*, 230 Mich App 276, 284; 583 NW2d 541 (1998); *Barnell v Taubman Co, Inc*, 203 Mich App 110, 123; 512 NW2d 13 (1993); *Assn of Businesses Advocating Tariff Equity v Pub Serv Com'n*, 192 Mich App 19, 24; 480 NW2d 585 (1991).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

[4] We recognize that in its direct appeal the Township asserts in its statement of facts that the trial court granted summary disposition in its favor on several grounds and that in its request for relief it asks this Court to reverse and vacate only the portion of the trial court's opinion relying on MCL 600.5809(3). However, as previously stated, we disagree with this interpretation of the trial court's opinion. It is plain that the trial court granted summary disposition in regard to all of plaintiffs' claims because it concluded that plaintiffs' claims were time-barred by MCL 600.5809(3). The trial court's opinion does not discuss the grounds for summary disposition raised by the Township in the trial court. Moreover, in its direct appeal the Township fails to provide any analysis regarding its request for this Court to "otherwise affirm" the trial court's grant of summary disposition. Thus, we decline to consider this issue. See *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 530; 730 NW2d 481 (2007) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, . . . nor may he give issues cursory treatment with little or no citation of supporting authority.") (quotation marks and citation omitted).